

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY MAY 6, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 2171**

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**Introduced by Assembly Member Wieckowski**  
**(Coauthor: Assembly Member Yamada)**  
(Coauthor: Senator Leno)

February 20, 2014

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An act to *amend Section 1569.886 of, to add Article 2.5 (commencing with Section 1569.261) to Chapter 3.2 of Division 2 of, and to add Section ~~1569.425~~ 1569.275 to, the Health and Safety Code, relating to care facilities.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 2171, as amended, Wieckowski. Residential care facilities for the elderly.

Existing law, the Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services. *Existing law requires that an admission agreement for a residential care facility for the elderly explain the resident's right to notice prior to an involuntary transfer, discharge, or eviction, as specified.* A violation of these provisions is a misdemeanor.

This bill would establish specified rights for residents of residential care facilities for the elderly, including, among other things, *to receive 90 days' notice before an involuntary transfer, discharge, or eviction, to be treated with accorded dignity and respect in their personal*

*relationships with staff, to be granted a reasonable level of personal privacy of accommodations, medical treatment, personal care and assistance, and to confidential treatment of their records and personal information, as specified. The bill would require, at admission, a facility staff person to personally advise a resident and the resident's representative, as described, of these and other specified rights and to provide them with a written copy. The bill would ~~require~~ authorize the department to assess civil penalties, pursuant to specified provisions, for a violation of these rights. ~~The bill would also, and would provide that a licensee who violates the provisions of the Residential Care Facilities for the Elderly Act these rights may be prosecuted by the Attorney General in a civil action for an injunction or civil damages, or both. The bill would also authorize a former or current resident of a residential care facility for the elderly to bring a civil action against any person or entity facility that violates that act, any regulatory requirements adopted by the department, or any right of the resident, as prescribed these rights, but would require the resident to provide the person or entity facility alleged to have violated any of the rights described above with a specified written notice at least 30 days prior to the commencement of the action. The bill would prohibit the maintenance of an action for damages if the person facility alleged to have violated these rights ceases, corrects, or otherwise rectifies the alleged violation and provides the resident with an appropriate remedy within 30 days of the written notice.~~*

By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Article 2.5 (commencing with Section 1569.261)
- 2 is added to Chapter 3.2 of Division 2 of the Health and Safety
- 3 Code, to read:

Article 2.5. Resident's Bill of Rights

1569.261. (a) It is the intent of the Legislature in enacting this article to adopt fundamental rights for all persons residing in a residential care facility for the elderly, as defined in Section 1569.2, to ensure that facilities respect and promote these rights, and to provide residents the ability to enforce their rights.

(b) In establishing this bill of rights, the Legislature intends that persons residing in residential care facilities for the elderly be treated with dignity, kindness, and respect, and that their civil liberties be fully honored.

(c) A central purpose of the bill of rights is to strengthen a resident's right to make choices about his or her care, treatment, and daily life in the facility and to ensure that the resident's choices are respected. The Legislature intends to enhance each resident's autonomy and ability to make decisions concerning his or her life.

(d) The Legislature also intends that each residential care facility for the elderly provide a safe, comfortable, and homelike environment for its residents and that it protect residents from any type of physical or mental abuse, neglect, restraint, exploitation, or endangerment.

1569.265. Rights and liberties set forth in this article do not diminish a resident's constitutional rights or any other rights set forth in other state or federal laws and regulations. Persons residing in residential care facilities for the elderly shall continue to enjoy all of their civil and legal rights.

1569.267. (a) At admission, a facility staff person shall personally advise a resident and the resident's representative of, and give a complete written copy of, the rights in this article and the personal rights in Section 87468 of Title 22 of the California Code of Regulations. The licensee shall have each resident and the resident's representative sign a copy of the resident's rights, and the licensee shall include the signed copy in the resident's record.

(b) Facilities shall prominently post, in areas accessible to the residents and their representatives, a copy of the residents' rights.

(c) The rights posted pursuant to subdivision (b) shall be posted both in English and in any other language in a facility where 5 percent or more of the residents can only read that other language.

(d) The facility shall provide initial and ongoing training for all members of its staff to ensure that residents' rights are fully respected and implemented.

1569.269. (a) Residents shall have all of the following rights:

(1) To be ~~treated with~~ *accorded dignity and respect in their personal relationships with staff, residents, and other persons.*

(2) To *be granted a reasonable level of* personal privacy in accommodations, medical treatment, personal care and assistance, visits, communications, telephone conversations, use of the Internet, and meetings of resident and family groups.

(3) To confidential treatment of their records and personal information and to approve their release, except as authorized by law.

(4) To be encouraged and assisted in exercising their rights as citizens and as residents of the facility. Residents shall be free from interference, coercion, discrimination, and retaliation in exercising their rights.

(5) To *be accorded* a safe and ~~home-like~~ *habitable* environment.

(6) To care, supervision, and services that meet their individual needs and is delivered by staff that are ~~at all times~~ sufficient in numbers, qualifications, and competency to meet their needs.

(7) To be served food of the quality and in the quantity necessary to meet their nutritional needs.

(8) To make choices concerning their daily life in the facility.

(9) To fully participate in planning their care, including the right to attend and participate in meetings or communications regarding the care and services to be provided in accordance with Section 1569.80, and to involve persons of their choice in the planning process. The facility shall provide necessary information and support to ensure that residents direct the process to the maximum extent possible, and are enabled to make informed decisions and choices.

(10) To be free from neglect, financial exploitation, involuntary seclusion, punishment, humiliation, intimidation, and verbal, mental, physical, or sexual abuse.

(11) To present grievances and recommend changes in policies, procedures, and services to the staff of the facility, the facility's management and governing authority, and to any other person without restraint, coercion, discrimination, reprisal, or other

1 retaliatory actions. The licensee shall take prompt actions to resolve  
2 residents' grievances.

3 (12) To contact the State Department of Social Services, the  
4 long-term care ombudsman, or both, regarding grievances against  
5 the facility. The facility shall post the telephone numbers and  
6 addresses for the local offices of the State Department of Social  
7 Services and ombudsman program, in accordance with Section  
8 9718 of the Welfare and Institutions Code, conspicuously in the  
9 facility foyer, lobby, residents' activity room, or other location  
10 easily accessible to residents.

11 (13) To be fully informed, as evidenced by the resident's written  
12 acknowledgement, prior to or at the time of admission, of all rules  
13 governing residents' conduct and responsibilities. In accordance  
14 with Section 1569.885, all rules established by a facility shall be  
15 reasonable and shall not violate any rights set forth in this chapter  
16 or in other applicable laws or regulations.

17 (14) To receive in the admission agreement a comprehensive  
18 description of the method for evaluating residents' service needs  
19 and the fee schedule for the items and services provided, and to  
20 receive written notice of any rate increases pursuant to Sections  
21 1569.655 and 1569.884.

22 (15) To be informed in writing at or before the time of admission  
23 of any resident retention limitations set by the state or facility,  
24 including any limitations or restrictions on the facility's ability to  
25 meet residents' needs.

26 (16) To reasonable accommodation of individual needs and  
27 preferences in all aspects of life in the facility, except when the  
28 health or safety of the individual or other residents would be  
29 endangered.

30 (17) To reasonable accommodation of resident preferences  
31 concerning room and roommate choices.

32 (18) To written notice of any room changes at least 30 days in  
33 advance unless the request for a change is initiated by a resident,  
34 required to fill a vacant bed, or necessary due to an emergency.

35 (19) To share a room with the resident's spouse, domestic  
36 partner, or a person of resident's choice when both spouses,  
37 partners, or residents live in the same facility and consent to the  
38 arrangement.

39 (20) To select their own physicians, pharmacies, privately paid  
40 personal assistants, hospice agency, and health care providers.

1 (21) To have prompt access to review all of their records and  
2 to purchase photocopies. Photocopied records shall be promptly  
3 provided, not to exceed two business days, at a cost not to exceed  
4 the community standard for photocopies.

5 (22) To be protected from involuntary transfers, discharges, and  
6 evictions in violation of state laws and regulations. Facilities shall  
7 not involuntarily transfer or evict residents for grounds other than  
8 those specifically enumerated under state law or regulations, and  
9 shall comply with enumerated eviction and relocation protections  
10 for residents. *A facility shall provide 90 days' notice to a resident*  
11 *prior to involuntarily transfer, discharge, or eviction.* For purposes  
12 of this paragraph, "involuntary" means a transfer, discharge, or  
13 eviction that is initiated by the facility, not by the resident.

14 (23) To move from the facility.

15 (24) To have relatives and other individuals of the resident's  
16 choosing visit at any time, subject to the resident's right to  
17 withdraw consent.

18 (25) To receive written information on the right to establish an  
19 advanced health care directive and, pursuant to Section 1569.156,  
20 the facility's written policies on honoring those directives.

21 (26) To be encouraged to maintain and develop their fullest  
22 potential for independent living through participation in activities  
23 that are designed and implemented for this purpose, in accordance  
24 with Section 87219 of Title 22 of the California Code of  
25 Regulations.

26 (27) To organize and participate in a resident council that is  
27 established pursuant to Section 1569.157.

28 (28) To protection of their property from theft or loss in  
29 accordance with Sections 1569.152, 1569.153, and 1569.154.

30 (29) To manage their financial affairs. The facility shall not  
31 require residents to deposit their personal funds with the facility;  
32 ~~and no facility.~~ *No licensee or employee of a facility shall become*  
33 *or act as a representative payee for any payments made to residents*  
34 *or a resident, if the resident or the resident's representative objects.*  
35 *No licensee or employee of a facility shall serve as agent for a*  
36 *resident under a power of attorney.*

37 ~~(30) Other rights as specified in this chapter or other state or~~  
38 ~~federal laws or regulations.~~

39 (b) A licensed residential care facility for the elderly shall not  
40 discriminate against a person seeking admission or a resident based

1 on sex, race, color, religion, national origin, marital status,  
2 registered domestic partner status, ancestry, actual or perceived  
3 sexual orientation, or actual or perceived gender identity.

4 (c) No provision of a contract of admission, including all  
5 documents that a resident or his or her representative is required  
6 to sign at the time of, or as a condition of, admission to a residential  
7 care facility for the elderly, shall require that a resident waive  
8 benefits or rights to which he or she is entitled under this chapter  
9 or provided by federal or other state law or regulation.

10 (d) Residents' family members, friends, and representatives  
11 have the right to organize and participate in a family council that  
12 is established pursuant to Section 1569.158.

13 (e) The department ~~shall~~ *may* assess civil penalties pursuant to  
14 Section 1569.49 for a violation of a right specified in this section.

15 1569.271. (a) Thirty days or more before the commencement  
16 of an action for damages pursuant to Section ~~1569.425~~ 1569.275,  
17 the resident or the resident's representative shall do both of the  
18 following:

19 (1) Notify the ~~person~~ *facility* alleged to have violated any  
20 requirements of this article, ~~any regulatory requirements adopted~~  
21 ~~by the department, or any right of the resident provided by federal~~  
22 ~~or state law or regulation of the particular alleged violation.~~

23 (2) Demand that the ~~person~~ *facility* cease, correct, or otherwise  
24 rectify the alleged violation.

25 The notice shall be in writing and shall be sent by certified or  
26 registered mail, return receipt requested, to the residential care  
27 facility in which the resident resides or resided or to the person's  
28 principal place of business within California.

29 (b) Except as provided in subdivision (c), no action for damages  
30 may be maintained under Section ~~1569.425~~ 1569.275 if the ~~person~~  
31 *facility* ceases, corrects, or otherwise rectifies the alleged violation  
32 ~~and provides or agrees to provide an appropriate remedy to the~~  
33 ~~resident~~ within 30 days after receipt of the notice.

34 (c) No action for damages may be maintained under Section  
35 ~~1569.425~~ 1569.275 upon a showing by a ~~person~~ *facility* alleged to  
36 have violated any requirements of this article, ~~any regulatory~~  
37 ~~requirements adopted by the department, or any right of the resident~~  
38 ~~provided by federal or state law or regulation~~ that all of the  
39 following exist:

1 (1) All residents similarly situated have been identified, or a  
2 reasonable effort to identify those other residents has been made.

3 (2) All residents so identified have been notified that ~~upon their~~  
4 ~~request, the person~~ *the facility* will cease, correct, or otherwise  
5 rectify the practices, acts, or methods alleged to be in violation  
6 ~~and provide an appropriate remedy to the residents~~ *violation*.

7 (3) The ~~person~~ *facility* has ceased from engaging, or if  
8 immediate cessation is impossible or unreasonably expensive under  
9 the circumstances, the person will, within a reasonable time, cease  
10 to engage, in the alleged violation.

11 (4) ~~The person has provided an appropriate remedy to the~~  
12 ~~residents or will do so in a reasonable amount of time.~~

13 (d) An action for injunctive relief brought under the specific  
14 provisions of Section ~~1569.425~~ *1568.275* may be commenced  
15 without compliance with subdivision (a). Not less than 30 days  
16 after the commencement of an action for injunctive relief, and after  
17 compliance with subdivision (a), the resident may amend his or  
18 her complaint without leave of court to include a request for  
19 damages. The appropriate provisions of subdivision (b) or (c) shall  
20 be applicable if the complaint for injunctive relief is amended to  
21 request damages.

22 (e) Attempts to comply with this section by a ~~person~~ *facility*  
23 receiving a demand shall be construed to be an offer to compromise  
24 and shall be inadmissible as evidence pursuant to Section 1152 of  
25 the Evidence Code. Furthermore, these attempts to comply with  
26 a demand shall not be considered an admission of engaging in an  
27 act or practice declared unlawful under this article. Evidence of  
28 compliance or attempts to comply with this section may be  
29 introduced by a defendant for the purpose of establishing good  
30 faith or to show compliance with this section.

31 SEC. 2. Section ~~1569.425~~ *1569.275* is added to *Article 2.5*  
32 *(commencing with Section 1569.261) of Chapter 3.2 of Division*  
33 *2 of the Health and Safety Code*, immediately following Section  
34 ~~1569.42~~ *1569.271*, to read:

35 ~~1569.425.~~

36 *1569.275.* (a) A licensee who violates any provision of this  
37 ~~chapter article~~ or regulations adopted by the department pursuant  
38 to this ~~chapter article~~, and whose violation presents an immediate  
39 or substantial threat to the physical health, mental health, or safety  
40 of a resident of a residential care facility for the elderly may be



1 enjoined from permitting the violation to continue and may be  
2 sued for civil damages within a court of competent jurisdiction.  
3 An action for injunction or civil damages, or both, may be  
4 prosecuted by the Attorney General in the name of the people of  
5 the State of California upon his or her own complaint or upon the  
6 complaint of a board, officer, person, corporation, or association,  
7 or by a person acting for the interests of itself, its members, or the  
8 general public. The amount of civil damages that may be recovered  
9 in an action brought pursuant to this section shall not exceed the  
10 maximum amount of civil penalties that could be assessed on  
11 account of the violation or violations. The licensee shall be liable  
12 for costs and ~~attorney~~ attorney's fees if the plaintiff prevails in an  
13 action pursuant to this subdivision.

14 (b) (1) A current or former resident of a residential care facility  
15 for the elderly, as defined in subdivision (k) of Section 1569.2,  
16 may bring a civil action against any ~~person or entity~~ facility that  
17 violates any requirements of this ~~chapter, any regulatory~~  
18 ~~requirements adopted by the department, or any right of the resident~~  
19 ~~provided by federal or state law or regulation~~ article. The suit shall  
20 be brought in a court of competent jurisdiction. The licensee shall  
21 be liable for the acts of the licensee's employees. The licensee  
22 shall be liable for up to five hundred dollars (\$500) for each  
23 violation, and for costs and ~~attorney~~ attorney's fees, and may be  
24 enjoined from permitting the violation to continue. Injunctive relief  
25 granted under this section shall be deemed prohibitory, and shall  
26 not be stayed pending appeal. The statute of limitations for suit  
27 under this subdivision shall be three years, which shall not begin  
28 to run until the violation has been discovered. The current or former  
29 resident has the right to a trial by jury. The right to bring a civil  
30 action shall survive the death of the resident. An agreement by a  
31 resident of a residential care facility for the elderly to waive his  
32 or her rights to sue pursuant to this subdivision shall be deemed  
33 contrary to public policy and shall be void and unenforceable.

34 (2) The right to bring a civil action against any person or entity  
35 for a violation of ~~Article 2.5~~ this article shall be subject to the  
36 requirements of Section 1569.271.

37 (c) The remedies specified in this section shall be in addition  
38 to any other remedy provided by law.

39 *SEC. 3. Section 1569.886 of the Health and Safety Code is*  
40 *amended to read:*

1 1569.886. (a) The admission agreement shall not include any  
2 ground for involuntary transfer or eviction of the resident unless  
3 those grounds are specifically enumerated under state law or  
4 regulation.

5 (b) The admission agreement shall list the justifications for  
6 eviction permissible under state law or regulation, exactly as they  
7 are worded in the applicable law or regulation.

8 (c) The admission agreement shall include an explanation of  
9 the resident's right to *90 days'* notice prior to an involuntary  
10 transfer, discharge, or eviction, the process by which the resident  
11 may appeal the decision and a description of the relocation  
12 assistance offered by the facility.

13 (d) The admission agreement shall state the responsibilities of  
14 the licensee and the rights of the resident when a facility evicts  
15 residents pursuant to Section 1569.682.

16 ~~SEC. 3.~~

17 *SEC. 4.* No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.